

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**PATENT APPLICATION**

Applicants : Jack J. Johnson et al.  
Application No. : 09/851,483 Confirmation No. : 3783  
Filed : May 8, 2001  
For : BIDDING FOR TELECOMMUNICATIONS TRAFFIC AND  
BILLING FOR SERVICE  
Group Art Unit : 3694  
Examiner : Ojo O. Oyeibisi  
Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

In response to the Final Office Action mailed January 29, 2008, applicants hereby submit a Notice of Appeal and this Pre-Appeal Brief Request for Review.

Claims 1, 8, 46-51, 53-67, 69-76, 78, 80-88, and 90-123 are pending in this patent application. Of those, claims 1, 8, 72-76, 78, 80, 81, 104-117, and 122 have been withdrawn from further consideration as being drawn to a non-election invention. Claims 46-51, 53-67, 69-71, 82-88, 90-103, 118-121, and 123 currently stand rejected. A response to each of the rejections is provided below.

**I. History**

Claims 46-51, 53-67, 69-71, 82-88, 90-103, 118-121, and 123 were previously rejected in the September 21, 2007 Office Action under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,790,642 to Taylor et al. ("Taylor") in view of U.S. Patent No. 6,161,099 to Harrington et al. ("Harrington").

In response to the September 21, 2007 Office Action, applicants requested an interview with the Examiner to discuss the Office Action, and, in particular, to discuss applicants' previous arguments regarding Taylor as set forth in the June 26, 2007 Reply to Office Action. During the October 18, 2007 telephonic interview, it was submitted that Taylor does not teach or suggest at least the transmission of "bidding data" as claimed. At the conclusion of the interview, the Examiner acknowledged the distinction between Taylor and applicants' claims, but requested that the arguments made during the interview be submitted in a formal response to the September 21, 2007 Office Action for further consideration. On November 13, 2007, applicants filed a Reply to Office Action ("November 13, 2007 Reply") that summarized the substance of the Examiner interview, and provided detailed arguments making clear that Taylor fails to teach or suggest at least the transmission of "bidding data" as recited in the pending claims.

The January 29, 2008 Final Office Action that followed applicants' November 13, 2007 Reply maintained the claim rejections set forth in the September 21, 2007 Office Action, and also responded to applicants' arguments regarding the failure of Taylor to teach or suggest the transmission of "bidding data." Applicants submit that the Examiner's response still fails to demonstrate how Taylor or Harrington teach or suggest all the features of applicants' independent claims 46, 53, 63, 82, and 88. Thus, it is submitted that the Examiner has failed to present all the elements required for a *prima facie* case of obviousness. Applicants respectfully request a review of the claim rejections in view of these comments and those provided below.

## **II. The Subject Matter of the Application**

Independent claim 46 recites a method for creating a bidding process among telecommunication Providers. The method includes, in a moderating computer, "receiving bids to provide telecommunication service . . . , processing the bids to produce processed bid data, and storing the bids and the processed bid data in a database of the moderating computer as first bidding data." The method further includes, in the moderating computer, "transmitting at least a portion of the first bidding data to at least a portion of the at least two telecommunication Providers." Independent claims 53, 63, 82, and 88 similarly involve providing a telecommunication Provider with data or information related to bids received from other telecommunication Providers. (See, e.g., element (b) of claim 53, element (b) of claim 63, element (c) of claim 82, and element (c) of claim 88).

### **III. Taylor Fails to Teach or Suggest Transmitting the Claimed “Bidding Data”**

As described on pages 3 and 4 of applicants’ November 13, 2007 Reply, Taylor describes a system in which a plurality of service centers in a telecommunications network competitively bid for the rights to service a particular call. (Taylor, Abstract). An originating service center receives a request to transmit facsimile information to a specified telephone number, assembles a bid request, and transmits the bid request to bidding service centers. (Taylor, col. 7, ll. 51-67). Each service center includes a costing algorithm which parses the information in the bid request and determines the cost to complete the call. (Taylor, col. 5, ll. 5-11). The calculated cost information (*i.e.*, bids) is transmitted from the bidding service centers back to the originating service center. (Taylor, col. 5, ll. 12-17). The originating service center compares the bids and selects the lowest bidding service center to make the call. (Taylor, col. 5, ll. 18-20). An instruction, or “contract” to make the call is sent to the lowest bidder. The information required, including any facsimile data to be transmitted, is sent to the lowest cost center, and the call is completed via the portion of the public switched telephone network associated with the lowest cost service center. (Taylor, col. 5, ll. 21-26).

In sharp contrast to Taylor, the method of independent claim 46 includes, in a moderating computer, “receiving bids to provide telecommunication service . . . , processing the bids to produce processed bid data, and storing the bids and the processed bid data in a database of the moderating computer as first bidding data.” The method further includes, in the moderating computer, “transmitting at least a portion of the first bidding data to at least a portion of the at least two telecommunication Providers.” Thus, the claimed method advantageously provides bidding data to a bidding telecommunication Provider, so that the Provider could, for example, adjust its own bid in view of another Provider’s bid. (Nov. 13, 2007 Reply, p. 4).

Taylor fails to teach or suggest at least the transmission of the claimed “bidding data” to at least two telecommunication Providers. In fact, the bidding service centers described in Taylor are not provided with any “bidding data” at all, thereby making it impossible for them to adjust their bids in view of the bids of other bidding service centers. Rather, only the originating service center receives bidding data. (*See* Taylor, col. 5, ll. 12-17). And, only the lowest bidding service center receives any further information from the originating service center once the bids are received. (*See* Taylor, col. 5, ll. 21-26). However, this information is not “bidding data” as

claimed, but rather it is related to the completion of the call. (See Taylor, col. 5, ll. 21-24; see also Nov. 13, 2007 Reply, pp. 4-5).

In response to this argument, the Examiner asserts that

Contrary to the applicant's assertion, Taylor discloses transmission of "bidding data" (i.e., In general however, assemble bid request block 403 will generate a data structure which includes all of the information required by the bidding service center, previously described in order to generate their respective bids. Once the bid request is assembled, it is transmitted to the bidding service center at block 404. After the bid request is transmitted, the originating service center then awaits arrival of the bids from the respective bidding service centers, see col. 7 line 60-col. 8 line 20).

(Jan. 29, 2008 Office Action, p. 15). This simply is not the case – Taylor in no way teaches or suggest the transmission of "bidding data" as claimed. The Examiner is simply referring to the same portion of Taylor that was cited in the September 21, 2007 Office Action, distinguished in the October 18, 2007 telephonic interview, and further distinguished in the November 21, 2007 Reply.

The Examiner again refers to the flow chart in Figure 4a of Taylor, and in particular, the assembly and transmission of a bid request (blocks 403 and 404), in an attempt to demonstrate the transmission of the claimed "bidding data." At this point in the method of Taylor, however, the originating service center has yet to receive *any* bids from the bidding service centers: "After the bid request is transmitted [at block 404], the originating service then awaits arrival of the bids from the respective bidding service centers." (Taylor, col. 8, ll. 1-3). Thus, it is impossible for the originating service center to have transmitted the claimed "bidding data" – which comprises "the bids and the processed bid data" – to the bidding service centers.

The Examiner, referring to the same portion of Taylor, asserts "that Taylor mentions that the originating service center then *awaits arrival of the bids from the respective bidding service centers*, thus the bids must have been transmitted for the bids to have been received by the originating service center." (Jan. 29, 2008 Office Action, p. 15, emphasis added). Applicants simply do not follow the logic behind this statement. In Taylor, when the originating service center is awaiting the arrival of bids from bidding service centers (*i.e.*, after transmitting the bid request to bidding service centers in block 404), the originating service center has ***not received*** any bids. Rather, as plainly stated, it is waiting to receive bids. Furthermore, even if the originating service center had received one or more bids from the bidding service centers, which

is clearly not the case, Taylor still fails to teach or suggest the transmission of “bidding data” by the originating service center following the receipt of a bid.

As for the Harrington reference also cited by the Examiner, this reference adds nothing to overcome the shortcomings of Taylor described above. Harrington discloses an apparatus and process for conducting municipal bond auctions over electronic networks. (Harrington, Abstract). The auctioneer in Harrington maintains a web site from which a user can obtain information about the bonds to be auctioned. (*Id.*). Combining Taylor with Harrington falls well short of teaching or suggesting the claimed method for creating a bidding process among telecommunication Providers.

Thus, for at least these reasons, the Examiner has failed to make a *prima facie* case of obviousness for rejecting independent claim 46. It follows that the Examiner has also failed to make a *prima facie* case of obviousness for rejecting dependent claims 47-51 and 118-119, which directly or indirectly depend upon independent claim 46. And, for similar reasons, the Examiner has failed to make a *prima facie* case of obviousness for rejecting independent claims 53, 63, 82, and 88, and their respective dependent claims, as each of these claims similarly involves providing a telecommunication Provider with data or information related to bids received from other telecommunication Providers.

#### **IV. Conclusion**

Based on the above comments, applicants submit that the Examiner has failed to provide all the essential elements needed for a *prima facie* obviousness rejection of applicants’ claims. Accordingly, applicants respectfully submit that the rejections of claims 46-51, 53-67, 69-71, 82-88, 90-103, 118-121, and 123 should be withdrawn and the claims should be allowed.

Respectfully submitted,  
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Date: March 26, 2008

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